

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010090290

v.

PASO ROBLES JOINT UNIFIED SCHOOL
DISTRICT,

PASO ROBLES JOINT UNIFIED SCHOOL
DISTRICT ,

OAH CASE NO. 2010090190

v.

ORDER DENYING STUDENT'S
MOTION TO QUASH SUBPOENA
DUCES TECUMS

PARENTS ON BEHALF OF STUDENT.

On November 5, 2010, Student filed a motion to quash a subpoena duces tecums (SDTs) issued by the Paso Robles Joint Unified School District's (District) attorney and served on Abdellaif Anthony Aichouri, M.D., and Randall Ball, Psy.D. for records they may have regarding Student. On November 10, 2010, the District filed an opposition to Student's motion to quash. This matter is presently set for hearing on November 16 and 17, 2010.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that in special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)."

Special education law does not specifically address motions to quash subpoenas or SDTs. In ruling on such motions, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure. Section 1987.1 of that code provides that a court may

make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

The District's SDTs to Dr. Aichouri and Dr. Ball request that they produce medical, psychological and mental health records, including assessment and evaluation information, counseling summaries, data collection, diagnoses, clinical and therapist notes, work samples and any correspondence regarding Student. Student objects to the District's SDTs for being overly broad and not relevant to the issues in the upcoming hearing. The District asserts that the information is relevant to the assessments that Dr. Aichouri and Dr. Ball conducted and their upcoming testimony regarding their assessments and Student's unique needs. Student has standing to challenge the District's SDTs to protect Student from unreasonable or oppressive demands, including unreasonable violations of his right of privacy by preventing the disclosure of irrelevant private information. (Code Civ. Proc., § 1987.1, subd. (a).)

The District's complaint alleges that its May 19, 2010 psychoeducational evaluation was appropriate and that Parents are not entitled to an independent educational evaluation (IEE) at District expense and that Student is not eligible for special education services.¹ The information sought in the District's SDTs is not overly broad and relevant to this proceeding regarding the appropriateness of the District's assessment and whether Student is eligible for special education services. Because Student is planning on having Dr. Aichouri and Dr. Ball testify, the requested records are relevant as to their assessments and their opinion regarding Student's unique needs. Accordingly, Student's motion to quash is denied.

ORDER

Student's motion to quash the SDTs served on Dr. Aichouri and Dr. Ball is denied.

IT IS SO ORDERED.

Dated: November 15, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Student's complaint requests an IEE on procedural grounds, alleging that the District failed to timely file its due process hearing request after Parents objected to the May 19, 2010 psychoeducational evaluation and requested an IEE.